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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF NEW YORK**

9
10 **BETTER MORNINGS, LLC and ISLAND
BREEZE, LLC**

11 **Plaintiffs,**

12 **vs.**

13 **JOSEPH NILSEN and DIGITAL
14 CHECKMATE, INC.**

15 **Defendants.**
16

Case No.: 2:19-cv-03854

**AFFIRMATION IN SUPPORT OF
REQUEST FOR CERTIFICATE OF
DEFAULT**

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18 Berwin Cohen hereby declares as follows:

- 19 1. I am counsel to the Plaintiffs in this action, Better Mornings, LLC and Island Breeze, LLC
20 (collectively, "Plaintiffs").
- 21 2. This action was commenced pursuant to the Lanham Act, 15 U.S.C. § 1121(a).
- 22 3. The time for Defendants, Joseph Nilsen and Digital Checkmate, Inc., to answer or otherwise
23 move with respect to the complaint herein has expired.
- 24 4. Defendants, Joseph Nilsen and Digital Checkmate, Inc., have not answered or otherwise
25 moved with respect to the complaint, and the time for Defendants Joseph Nilsen and Digital
26 Checkmate, Inc., to answer or otherwise move has not been extended.
- 27 5. Defendants Joseph Nilsen and Digital Checkmate, Inc., are not infants or
28

1 incompetent. Defendants Joseph Nilsen and Digital Checkmate, Inc., are not presently in the
2 military service of the United States, as appears from facts in this litigation.

3 6. The complaint was properly served on defendants Joseph Nilsen and Digital Checkmate,
4 Inc. pursuant to New York law, as shown by the annexed affidavits of service. See Exhibit
5 A, Affidavit of Service on Joseph Nilsen and Exhibit B, Affidavit of Service on Digital
6 Checkmate, Inc.

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8 7. The facts entitling Plaintiffs to the claimed relief are as follows: Plaintiffs are part of
9 Nutragroup, a dietary supplement provider based in San Juan, Puerto Rico. Their
10 primary business is selling dietary supplements to United States consumers, including
11 weight loss supplements, hormonal supplements, and the like.

12 8. Plaintiffs brought this action to restrain Defendants from interfering with and damaging
13 their business interests by unlawful and malicious conduct, including false advertising
14 under 15 USC §1125(a), product disparagement, commercial defamation, and deceptive
15 business practices under New York Gen. Bus. Law § 349.

16 9. Since April 2019, Defendant Joseph Nilsen, individually and through his company
17 Defendant Digital Checkmate, Inc., has engaged in a pattern of interfering with the
18 normal commercial operation of Plaintiffs' virtual storefronts on the internet
19 marketplace platform Amazon.com by attacking Nutragroup product listings in an
20 attempt to get particular products removed from sale by Amazon, and publishing false
21 and defamatory information to dissuade customers from purchasing the products.

22 10. Defendants' attacks primarily involve using unauthorized backdoors to improperly
23 change Plaintiffs' product listings and insert false information. For instance, past
24 attacks have modified product listings to state that Plaintiffs' products contain banned
25 drugs and chemicals, or stating that the product is a choking hazard.

26 11. Defendants have also flooded Plaintiffs' product listings with baseless negative
27 reviews, and used social media to spread defamatory statements and misinformation
28 about Plaintiffs and Nutragroup's founder and chief executive, Kevin Thobias.

1 12. Accordingly, Plaintiffs filed a complaint seeking damages and injunctive relief against
2 Defendants, which Defendants have failed to answer.

3 WHEREFORE, plaintiffs Better Morning, LLC and Island Breeze, LLC request that the
4 default of defendants Joseph Nilsen and Digital Checkmate, Inc. be noted and a certificate of
5 default issued.

6 I declare under penalty of perjury that the foregoing is true and accurate to the best of
7 my knowledge, information and belief, that the amount claimed is justly due to Plaintiffs, and
8 that no part thereof has been paid.

9
10 DATED: August 2, 2019

/s/ Berwin Cohen

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